

In the High Court of Uttaranchal at Nainital.

**First Appeal From Order No. 833 of 2001.
(Old No. 86 of 1999)**

The United India Insurance Company Ltd.
Tikonia Haldwani, thought the Assistant.
Manager Legal Sri S.P. Asthana
United India Insurance Company Ltd.,
Divisional Office 17 Admonston Road,
Civil Lines, Allahabad.

.....Defendant/Appellant

Versus

- (1) Sushil Kumar S/o late Sri S.P. Singh,
- (2) Smt. Sarla Devi w/o late Sri Shripal Singh,
- (3) Master Gaurav 11 years S/o late Sri Shripal Singh
All residents of Spring Dali P.W.D. Quarters,
Tallital, Nainital.

.....Claimants- Respondents

- (4) Smt. Sarla Devi W/o late Sri Shripal Singh
R/o Spring Dali P.W.D. Quarters, Tallital, Nainital.
- (5) B.S. Chadda son of Sri Kulwant Singh Chaddha,
R/o Chaddha Building Kathgodam, District- Nainital.

.....Defendants/Respondents.

Sri Prabhat Pandey, learned counsel for the appellant.
Sri T.A. Khan, learned counsel for the claimant-respondent No.3

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Dated: 12th Aug., 2004.

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma, J.

This appeal has been filed by the United India Insurance Company under Section 173 of the Motor Vehicles Act, 1988 against the judgment and award dated 10.12.1998 passed by the Motor Accident Claims Tribunal/Special Judge/Addl. District & Sessions Judge, Nainital, by which the claim petition was decreed for Rs. 5,25,000/- as compensation against the United India

Insurance Company in Motor Accident Claim Case No. 186 of 1996.

Brief facts giving rise to the present appeal are, that on 05.10.1995 deceased Shripal Tivatia started his journey from Nainital to Bhowali for inspection of site by Maruti Car No. UP-02 A-9706. Deceased was employed on the post of Junior Engineer in the Lok Nirman Vibhag. The said Maruti Car was owned by claimant No.2 and Opp. Party No.2. The driver of the said Car B.S. Chadda without any caution stopped the said vehicle on the slop in the road near Bhumiadhar and went to the outside for call of nature while the deceased was boarded in the vehicle. During this period the said Maruti Car skidded on the slop and fell into khud. In the said accident Shripal Singh Tivatia sustained grievous injuries and died in the Hospital at Nainital on the same day at 11.20 p.m. The deceased was 48 years of age at the time of accident. He was earning Rs. 6547 /- per month as salary. Claimants Nos. 1 & 3 are sons and claimant No.3 is the wife of deceased who filed the claim petition for the amount of Rs. 15,00,000/- as compensation for the death of Shripal Singh.

Before the Tribunal opposite parties Nos. 2 & 3 owner and driver of the Maruti Car in question filed their separate written statements accepting all the allegations levelled against them. They also stated that the vehicle in question was insured with Opp. Party No.1-United India Insurance Company Ltd.

On the pleadings of the parties, following issues were framed by the learned Tribunal:-

- (1) *Whether the deceased Shripal Singh Tivatia died due to injuries sustained in an accident on falling down the Maruti Car UP 02A/ 9706 in*

the Khud on 05.10.1995 at about 1.30 p.m. when he was going from Nainital to Bhowali?

- (2) Whether the accident occurred due to negligence of Opp. Party No.3 Sri B.S. Chadda?*
- (3) Whether in the Maruti Car No. UP 02A/9706 instead of Taxi, Plate, plate of private Car was affixed. If so, its effect?*
- (4) Whether the driver was not having valid driving licence at the time of accident? If so, its effect?*
- (5) Whether the fitness of the vehicle had been expired at the time of accident? If so, its effect?*
- (6) To what amount of compensation the claimants are entitled and from which of the opposite parties?*

The learned Tribunal decided the issues in favour of the claimants after considering the oral and documentary evidence came to the conclusion that the accident was caused due to negligence of Opp. Party No.3-driver B.S. Chadda. The Tribunal decreed the claim petition against the Insurance Company for Rs. 5,25,000/- alongwith interest at the rate of 9% from the date of application till the date of final payment.

The learned counsel for the appellant- Insurance Company pressed this appeal only on the point of quantum of compensation. We have gone through the entire material on record. There is no dispute regarding the insurance of vehicle in question. We find that there is no illegality or infirmity in the order of learned Tribunal. The Tribunal has rightly calculated the amount of compensation keeping in view the dependency of the deceased. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged as envisaged

in sub-section (2) of Section 149 of the Motor Vehicles Act. We are fortified in our view by the Apex Court judgment in case of ***National Insurance Company Ltd. versus Nicolletta Rohtagi and others*** reported in **2003 (3) T.A.C. 293 (Supreme Court)** in which the Hon'ble Apex Court has held that, ***“even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle”***.

Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant Insurance Company has no force and is liable to be dismissed.

The appeal is dismissed accordingly No order as to costs.

(B.S. Verma, J.)

(P.C. Verma,J.)

P.Singh